

CASE TYPE: EMPLOYMENT

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Jerome C. Ruzicka,

Court File No.: 27-cv-16-621

Judge: Karen A. Janisch

Plaintiff,

v.

Starkey Laboratories, Inc., a corporation,
William Austin and Brandon Sawalich,,

**NOTICE OF FILING NOTICE
OF REMOVAL TO THE UNITED
STATES DISTRICT COURT FOR THE
DISTRICT OF MINNESOTA**

Defendants.

TO: **DISTRICT COURT ADMINISTRATOR**, Fourth Judicial District Court, Hennepin County, Minnesota, and plaintiff **JEROME C. RUZICKA** and his attorneys of record, **MARSHALL H. TANICK, HELMUTH & JOHNSON**, 8050 West 78th Street, Edina, Minnesota, 55439

PLEASE TAKE NOTICE that on this date Defendants Starkey Laboratories, Inc., William Austin and Brandon Sawalich filed the attached Notice of Removal with the Clerk of the United States District Court for the District of Minnesota, to remove this action to said Court pursuant to 28 U.S.C. §§ 1331, 1441(a) and 1446. The filing of the attached Notice of Removal, together with the filing of this Notice of Filing of Notice Removal, effects the removal of this action. No further proceedings may be had in the Fourth Judicial District Court, Hennepin County, Minnesota, unless and until this action is remanded.

HENSON & EFRON, P.A.

Dated: January 26, 2016

By

A handwritten signature in black ink, appearing to read "David Bradley Olsen", is written over a horizontal line.

David Bradley Olsen, , #197944

Scott A. Neilson, , #239951

Bruce C. Recher, , #89989

Stuart T. Williams, , #11750X

Court J. Anderson, , #331570

John N. Bisanz, Jr., , #0389098

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220 South Sixth Street, Suite 1800

Minneapolis, MN 55402-4503

Telephone: (612) 339-2500

Attorneys for Defendants

4829-6393-4508, v. 1

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Jerome C. Ruzicka,

Civ. No. _____

Plaintiff,

v.

NOTICE OF REMOVAL

Starkey Laboratories, Inc., a corporation,
William Austin, and Brandon Sawalich,

Defendants.

TO: THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MINNESOTA.

PLEASE TAKE NOTICE that Defendants Starkey Laboratories, Inc. ("Starkey"), William Austin ("Austin") and Brandon Sawalich ("Sawalich") (collectively "Defendants") hereby remove this action pursuant to 28 U.S.C. §§ 1331, 1441(a) and 1446 from the Fourth Judicial District Court, Hennepin County, Minnesota, to the United States District Court for the District of Minnesota. As grounds for removal, Defendants state that:

1. On or about January 14, 2016, at 5:29 p.m., counsel for Plaintiff Jerome C. Ruzicka ("Ruzicka") provided a courtesy copy of the Fourth Judicial District Court, Hennepin County, Minnesota Summons (the "State Court Summons") and Complaint (the "State Court Complaint") to Defendant's counsel via email. True and correct copies of the State Court Summons and Complaint are attached hereto as **EXHIBITS A and B**, respectively.

2. Ruzicka's counsel represented in his January 14, 2016, email that the State Court Summons and Complaint attached hereto as Exhibits A and B were being filed with the Fourth Judicial District Court, Hennepin County, Minnesota, and served upon the Defendants. The

Hennepin County District Court Administrator's Register of Actions shows that the state court Summons and Complaint were filed of record on January 14, 2016, and assigned Case No. 27-CV-16-621. To date, none of the Defendants have been served, although counsel has agreed to accept service.

3. This Notice of Removal is within the time prescribed by 28 U.S.C. § 1446(b) because it made within thirty (30) days of receipt, through service or otherwise, of a copy of the State Court Summons and Complaint.

4. Starkey, Austin and Sawalich, being all of the Defendants, consent to and join in this removal.

5. Pursuant to 28 U.S.C. § 1331 this Court has original jurisdiction of all civil actions arising under the laws of the United States.

6. The State Court Complaint attached hereto as Exhibit B purports to include a benefits claim against Defendants arising under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1132(a)(1)(B). *See* Exhibit B, Pars. 63-70.

7. The State Court Complaint attached hereto as Exhibit B purports to include a claim for breach of fiduciary against Defendants arising under ERISA, 29 U.S.C. § 1109(a), the exclusive jurisdiction over which lies in the United States District Court pursuant to 29 U.S.C. § 1132(e)). *See* Exhibit B at prayer for relief ("WHEREFORE") Par. 4.

8. As required by 28 U.S.C. § 1446(d), Defendants will, after filing this Notice of Removal, provide written notice thereof to Ruzicka's counsel in the form of the Notice of Filing of Notice of Removal attached hereto as **EXHIBIT C**, and will file a copy of said Notice with District Court Administrator for the Fourth Judicial District Court, Hennepin County, Minnesota,

WHEREFORE, Defendants hereby remove this action from the Fourth Judicial District Court, Hennepin County, Minnesota, to the United States District Court for the District of Minnesota.

HENSON & EFRON, P.A.

Dated: January 26, 2016

By 

David Bradley Olsen, , #197944

Scott A. Neilson, , #239951

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